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inquire into and correct mistakes, injustice and wrongs in both the judicial and the executive departments.

This case is especially interesting in view of the recent attempts to secure congressional action establishing a Court of Land Appeals. The Department of the Interior has recognized this need by securing provision in the Sundry Civil Appropriation Bill for the salaries of certain law officers who are to assist the Secretary of the Interior in deciding important questions of law. This is a step in the right direction as there exists a crying need for a court of last appeal for the Land Department.

The inconsistent rulings of the Land Department point to the desirability of securing certainty in decisions by substituting a permanent court of lawyers in the place of administrative officers who are forced to depend on administrative law clerks.

L. G.

SALES: CONDITIONAL SALES: LOSS ON SELLER.—The question as to whether the loss due to the destruction of goods during the existence of an agreement of conditional sale should fall upon the seller or the buyer has often been presented to the courts. In such agreements it is expressly provided that the title to the goods shall remain in the vendor until payment of the full price by the vendee, but the vendee is given the possession and use of the goods in the meantime. The authorities are in conflict on the question of responsibility for loss but the majority view places the loss upon the conditional buyer.¹

The question apparently has never been decided by the courts of appeal in California before the case of *Waltz v. Silveira*.² In this case the court decided that the loss should fall upon the seller. The court did not discuss the matter at length nor refer to any previous decision upon the point in this jurisdiction. The opinion was based on the rule that risk follows title. That is the rule in case of ordinary sales and contracts to sell; the risk there follows the property.³ The situation is different in the case of conditional sales since the seller retains title merely to secure payment of the price. The reasons for holding that the loss should fall upon the buyer rather than the seller have been suggested by many cases which are ably discussed by a learned author in his treatise on sales.⁴ The Uniform Sales Act puts the loss upon the buyer. It is hard to see why this court in passing upon a question, apparently for the first time, should fix the law of this state contrary to the

¹ *Chicago Ry. Equipment Co. v. Merchants' Bank* (1890), 136 U. S. 268, 34 L. Ed. 349, 10 Sup. Ct. Rep. 999; *Phillips v. Hollenberg Music Co.* (1907), 82 Ark. 9, 99 S. W. 1105; *Tufts v. Griffin* (1890), 107 N. C. 47, 12 S. E. 68, 10 L. R. A. 526, 22 Am. St. Rep. 863; *Williston on Sales*, § 304.

² (Nov. 9, 1914), 19 Cal. App. Dec. 598.

³ *Potts Drug Co. v. Benedict* (1909), 156 Cal. 322, 324, 104 Pac. 432.

⁴ *Williston on Sales*, §§ 304, 330, 331, 334, 571.

weight of authority and the better reasoning. The buyer has the possession of the property and the seller cannot refuse to transfer title on payment of the price.⁵ It has also been decided that the benefit of increase goes to the conditional buyer.⁶ "Though payment be a condition precedent to the vesting of legal title, it is not a condition precedent to the vesting of a right of property in the buyer, called in the cases a 'special property'. The transaction is, therefore, properly called a conditional sale, not a conditional contract to sell."⁷

The contract in the principal case imposed a duty upon the vendee to return the safe to the vendor in good order in any event. By suing for the price the court under the established rule held that the seller had waived his right to make a claim based upon his right to possession.⁸

By this decision the buyer's right under a conditional sale must be looked upon as a mere contract right and the seller must be considered as the owner of the property. The seller can sue for the price in the event of destruction of the goods only when the contract expressly provides that the loss shall fall upon the buyer.

M. C. L.

STATE OF INSURRECTION: POWER OF MILITARY UNDER EXECUTIVE PROCLAMATION.—The Governor of Montana issued his proclamation to the effect that the county of Silver Bow was in a state of insurrection, under martial law, and under the jurisdiction of the military authorities. One McDonald was seized by the military and detained as a ring leader of the insurrection. One Gillis was arrested for resisting a military officer, tried by a military court, and sentenced to a fine and imprisonment. Both applied to the Supreme Court of the state for a writ of habeas corpus. For the petitioners it was urged that the executive proclamation accomplished, and could accomplish, no more than adding the military to the police force of the state with the same powers that peace officers have in putting down a riot, and no more. Against the granting of the writ it was argued that the proclamation of the Governor created martial law, meaning thereby "No law except the sword, unsheathed and uncontrolled". No court has ever sanctioned the theory that the arbitrary will of the military commander can be substituted for the law of the land, except in the theater of actual military operations in case of war against a belligerent,

⁵ *Carpenter v. Scott* (1881), 13 R. I. 477, 479; *Chase v. Ingalls* (1877), 122 Mass. 381, 383; *Crompton v. Pratt* (1870), 105 Mass. 255, 258.

⁶ *Anderson v. Leverette* (1902), 116 Ga. 732, 42 S. E. 1026; *Allen v. Delano* (1869), 55 Me. 113, 92 Am. Dec. 573; *Bunker v. McKenney* (1875), 63 Me. 529; *Clark v. Hayward* (1877), 51 Vt. 14.

⁷ *Williston on Sales*, § 330.

⁸ *Parke etc. Co. v. White River Lumber Co.* (1894), 101 Cal. 37, 35 Pac. 442; *Holt Mfg. Co. v. Ewing* (1895), 109 Cal. 353, 42 Pac. 435; *Muncy v. Brain* (1910), 158 Cal. 300, 110 Pac. 945.